

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Petition of Allamakee-Clayton Electric Cooperative	)	
for Waiver of Rural Broadband Experiments	)	
Defined Deployment Obligations	)	
	)	
Petition of Consolidated Communications	)	
Networks, Inc. for Waiver of Rural Broadband	)	
Experiments Defined Deployment Obligation	)	

**ORDER**

**Adopted: November 7, 2019**

**Released: November 7, 2019**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant two petitions, separately filed by Allamakee-Clayton Electric Cooperative (ACEC) and Consolidated Communications Networks Inc. (Consolidated) (collectively, petitioners), seeking waiver of their obligations to provide service to a specific number of locations as part of the rural broadband experiments (RBE) program.<sup>1</sup> Petitioners demonstrate that the required number of locations exceeds the actual number of locations that the petitioners have been able to identify within their respective study areas. In granting these waiver requests, we make pro-rata adjustments to the petitioners' support amounts and direct the Universal Service Administrative Company (USAC) to prorate reductions in future payments for the remainder of the support term.

**II. BACKGROUND**

2. On July 14, 2014, the Commission released an order establishing the RBE program as part of its universal service high-cost program.<sup>2</sup> The Commission designed this program to test future Connect America Fund (CAF) auction processes that would allocate support in price cap territories where the average cost of service exceeded a certain high-cost threshold, as determined by the Connect America

<sup>1</sup> Petition of Allamakee-Clayton Electric Cooperative for Waiver of Rural Broadband Experiments Build-out Requirement, WC Docket Nos. 10-90, 14-58 (Oct. 1, 2018) (ACEC Petition), as supplemented, WC Docket 14-58 (Sept. 24, 2019) (ACEC Supplement); Emergency Request for Expedited Treatment, Petition of Consolidated Communications Networks, Inc., WC Docket No. 10-90 et. al. (filed Apr. 11, 2019) (Consolidated Petition), as supplemented, WC Docket 10-90 et. al. (Sept 11, 2019) (Consolidated Supplement).

<sup>2</sup> *Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (*Rural Broadband Experiments Order*).

Model (CAM) (exclusive of areas already served by an unsubsidized competitor).<sup>3</sup> For this program, the Commission set bidding areas based on census block and limited available funding only to residential and small business locations in eligible high-cost census blocks.<sup>4</sup> The Commission required successful bidders to serve every CAM-determined location within their winning bid areas (including locations for which no support had been allocated).<sup>5</sup> In addition, RBE support recipients were required to submit information about their served locations on an annual basis and to certify, by certain deadlines, incremental progress in meeting their defined deployment obligations, measured as a percentage of their full obligation (build-out milestones).<sup>6</sup>

3. The Commission indicated that the failure to meet a build-out milestone was a performance default, triggering default measures that included a 12-month withholding period (with an increase in withholding after the first sixth months) and a subsequent draw on a letter of credit securing the full award amount.<sup>7</sup> The Commission invited RBE support recipients to submit petitions for waiver of their build-out obligations when circumstances outside of their control prevented them from meeting their obligations.<sup>8</sup> In November of 2014, RBE bidders placed their bids, and on December 5, 2014, the Bureau selected the first round of winning RBE bidders.<sup>9</sup>

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<sup>3</sup> *Id.* at 8775, 8786, paras. 13, 51; *see also Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 14-93, Order, 30 FCC Rcd 2718, 2718-19, para. 3 (WCB 2015). In 2013, the Bureau adopted a model platform that relies on a combination of commercial address-based residential data and census data to determine residential and business locations. *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 28 FCC Rcd 5301, 5322-23, para. 52 (WCB 2013). Although the Bureau has subsequently modified the CAM model outputs many times, it has not changed these fundamental inputs. *See, e.g., Wireline Competition Bureau Announces Availability of Version 4.2 of the Connect America Fund Phase II Cost Model et al.*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 3884 (WCB 2014).

<sup>4</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8775-76, paras. 13-14; *Technology Transitions et al.*, WC Docket No. 10-90 et al., Order et al., 29 FCC Rcd 1433, 1472, para. 111 (2014).

<sup>5</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8776, paras. 13 n.34, 15. If a census block is served by multiple carriers, wire centers, or splitters (Node2), the CAM v4.2, the version which calculated reserve prices for the RBEs, calculates the costs associated with each carrier, wire center, or splitter separately, on a sub-census block basis. CostQuest Associates, Inc., *Connect America Cost Model: Model Methodology* at 16 n.16 (Dec. 22, 2014), <https://transition.fcc.gov/wcb/CAMv.4.2Methodology.pdf>. This results in some census blocks having a combination of low-cost, high-cost, and/or extremely high-cost locations located within one census block. As a result, the number of funded locations in a census block was not necessarily the same as the number of locations in the block according to the U.S. Census. *See id.* at 12-13.

<sup>6</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8794, para. 74 (specifying that by the end of their third year, RBE support recipients must offer the requisite level of service to at least 85% of the number of required locations and by the end of the fifth year, 100% of all such locations); *see also id.* at 8794, para. 75 (specifying that RBE support recipients electing to receive accelerated payments were required to meet an additional 25% milestone falling 15 months after their first support disbursement).

<sup>7</sup> *Id.* at 8799-800, paras. 90-94; *see also id.* at 8800-801, para. 96 (stating that a performance default could lead to other consequences, including, among other things, potential revocation of ETC designation and disqualification from future competitive bidding for universal service support). During the 12-month withholding period, RBE funding recipients can cure their default by coming into compliance. *Id.* at 8799, para. 92. Moreover, once the Commission draws on the letter of credit, the RBE funding recipient has a one-time opportunity to cure the default at any time during the support term. *Id.* at 8800, para. 93. Once a default is cured, the RBE funding recipient is entitled to have any withheld or recovered support restored and would become eligible to receive full support payments in accordance with the terms of its award. *Id.*

<sup>8</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8800, para. 95. The Commission stated that if the petitioner defaulted on its performance obligations while its waiver petition was pending, the Bureau should move forward

(continued...)

4. In two high-cost programs that followed the Commission's adoption of the *Rural Broadband Experiments Order*—first, the offer of model-based support to price cap carriers (Phase II model-based offer) and second, the CAF Phase II auction—the Commission recognized and adopted compensatory strategies for addressing the unique limitations of setting defined deployment obligations based on the CAM model. In its *December 2014 Connect America Order*, as it was finalizing requirements and conditions for the Phase II model-based offer, the Commission acknowledged that, due to certain limitations in the CAM's underlying data inputs (i.e., 2010 Census population statistics, FCC study area boundary maps, commercial proprietary data) and demographic changes over time, the number of model-determined locations could exceed the number of actual locations.<sup>10</sup> In most instances, the Commission explained, these inaccuracies were likely to be minor and cancel each other out across the multiple census blocks in eligible areas in a state.<sup>11</sup> The Commission recognized, however, that in particular cases, “the total number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations.”<sup>12</sup> The Commission also stressed that the CAM location estimates are based on data representing conditions at a point in time but are used by the Commission to set obligations extending over the support term,<sup>13</sup> and that “a variety of unforeseen factors, after the initial planning stage, [could] cause significant changes as a network is actually being deployed in the field . . . .”<sup>14</sup> Accordingly, the Commission encouraged price cap carriers electing to receive the offer to “promptly bring any situations involving a known disparity between the number of model-determined locations and the actual number of locations in a state to the Commission's attention while developing their network plans in that first year.”<sup>15</sup> The Commission delegated authority to the Bureau to address such situations by appropriately adjusting the number of funded locations in the relevant state and reducing support on a pro rata basis.<sup>16</sup>

5. The Commission also provided these carriers with some flexibility in responding to unforeseen contingencies by permitting deployment to 95% of their total number of funded locations in a given state.<sup>17</sup> At the end of their deployment, carriers relying on this flexibility would be required to

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with default measures, subject to full restoration of support and support payments should the petition be subsequently granted. *Id.*

<sup>9</sup> *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (WCB 2014).

<sup>10</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38, n.88.

<sup>11</sup> *Id.* at 15659, para. 38. In both the Phase II model-based offer proceeding and the CAF Phase II auction proceeding, the Commission set compliance reviews at the state-level rather than at the study area level, which provided these funding recipients with greater flexibility in meeting their defined deployment obligations. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15689, paras. 43 n.87, 128 (2014) (*December 2014 Connect America Order*); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6014-15, para. 181 (2016) (*Phase II Auction Order*).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 15659, para. 38, n.88.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 15659-61, paras. 38-42. To take advantage of this flexibility, these carriers had to identify at least 2% of the eligible locations in the state that they did not intend to serve by December 31, 2015, so that the associated census blocks could be included in the Phase II competitive bidding process. *Id.* at 15659-60, para. 39.

refund support based on the number of unserved funded locations multiplied by one-half the average support of the top 5% of the highest cost funded locations nationwide.<sup>18</sup> Finally, the Commission stressed that while support recipients might be able to demonstrate good cause for waiver of deployment obligations in limited circumstances, the “failure to plan for some contingencies would counsel against a finding that there is good cause to grant a waiver request.”<sup>19</sup>

6. In the CAF Phase II auction proceeding, the Commission extended the same flexibility to auction support recipients in meeting their deployment obligations, i.e., auction support recipients must deploy to 95% of their funded locations and must refund support based on the number of unserved locations at the highest cost funded locations rate.<sup>20</sup> The Commission, however, also stressed that carriers awarded support through competitive bidding processes have significant control over project area and size as well as support amounts.<sup>21</sup> For this reason, the Commission warned, bidders would have difficulty justifying waiver of their final milestone based on unforeseeable circumstances if they could not demonstrate that they exercised the requisite level of due diligence at the beginning of the support term by planning to serve 100% of their funded locations.<sup>22</sup>

7. To ensure that bidders would not thereby be discouraged from bidding on census blocks where apparent discrepancies may exist between funded and actual locations, the Commission established an adjudicatory process for facilitating adjustments to funded locations counts (and a pro rata reduction in support) at the beginning of the support term.<sup>23</sup> Such process, which remains pending, is initiated by support recipients’ submission of information identifying actual locations and proof that “no additional locations could be found.”<sup>24</sup> Relevant stakeholders will then have an opportunity to challenge

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<sup>18</sup> *Id.* at 15660-61, para. 42.

<sup>19</sup> *Id.* at 15660, para. 40, n.93; *see also id.* at 15700, para. 154.

<sup>20</sup> *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-46.

<sup>21</sup> *See id.* at 5966, para. 47 (“Unlike the price cap carriers who are required to accept or decline the offer of model-based support at the state level, bidders in the Phase II competitive bidding process will be able to bid on smaller projects. Potential bidders are responsible for undertaking the necessary due diligence in advance of bidding to identify particularly problematic census blocks when they are preparing their bids and have the option of not including such blocks in their bids. Therefore, we see no reason to provide greater leniency in deployment obligations for recipients of support through the competitive bidding process.”); *see also Connect America Fund*, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1392, para. 32 (2018) (“Because compliance will be determined on a state-wide basis, the bidder can identify additional locations in the other eligible census blocks within the census block group or choose to bid on additional census block groups where it is able to identify more locations in eligible census blocks than the CAM had identified to meet its statewide total.”) (*Phase II Auction Reconsideration Order*).

<sup>22</sup> *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1393, para. 35; *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, AU Docket No. 17-182, WC Docket No. 10-90, 33 FCC Rcd 1428, 1471, para. 114 (2018) (requiring Phase II auction support recipients to make a due diligence certification that includes verifying that they took steps to ascertain the number of actual locations within census blocks).

<sup>23</sup> *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-92, paras. 23-28.

<sup>24</sup> *Id.* at 1389, para. 23 (providing that participants “must submit evidence of the total number of locations in the eligible areas in the state, including geolocation data (indicating the latitude/longitude and address of each location), in a format to be specified by the Bureau, for all the actual locations it could identify”); *id.* at 1389, para. 24 (directing the Bureau to “specify the types of information that a support recipient should submit to demonstrate that it could not locate additional locations on the ground, specify the types of evidence that commenters should submit to dispute the evidence provided by the support recipients and set the parameters of this review process, set the parameters for the audits, and adopt any other necessary implementation details,” after seeking notice and comment).

participants' evidence and to identify other locations.<sup>25</sup> The Commission delegated to the Bureau the authority to determine, based on a preponderance of the evidence, that there are no additional locations in the eligible areas within the state, and to make adjustments to the auction support recipient's defined deployment obligations and support on a pro rata basis, subject to future verification.<sup>26</sup>

8. On August 7, 2015, the Bureau authorized certain bidders, including ACEC and Consolidated, to receive RBE support.<sup>27</sup> Pursuant to such authorization, and as a condition of receiving such support, ACEC committed to serving a set number of locations in each of four study areas (SACs) in Iowa, and Consolidated, to one SAC in North Dakota.<sup>28</sup> ACEC submitted its waiver request on October 1, 2018, and a supplement to this request on September 24, 2019;<sup>29</sup> Consolidated submitted its waiver request on April 11, 2018 and a supplement to this request on September 11, 2019.<sup>30</sup> Both petitioners seek waiver of their remaining milestones for each of the study areas in which they won support to the extent that such obligations exceed the total number of actual locations that they were able to identify. The support awards and the actual location counts identified by each of the petitioners is described in greater detail in Attachment A.

9. *ACEC Petition for Waiver.* ACEC reports that, in each of its four study areas and in advance of its 85% milestone (October 1, 2018), it serves at least 85% of the total number of actual locations it identified.<sup>31</sup> ACEC also commits to serving all such locations by its final milestone deadline, September 30, 2020.<sup>32</sup> As part of its waiver request, ACEC submits detailed location information (including addresses, geocoordinates, and census block identifiers) for each of the locations that it has identified. In addition, ACEC explains that it identified these locations by creating a three-layer map consisting of census block boundary data, parcel boundary data, and aerial photography of the census blocks (provided by the county and taken in 2016).<sup>33</sup> ACEC states that it then used the county's updated county property records (publicly available online) to identify the number and types of structures within the SACs, their uses (residential, small business, agriculture, abandoned), and their eligibility for reporting.<sup>34</sup> ACEC states that it also used an affiliated electric company's service address database to ensure that, whenever electric service was provided to a location, the location was identified as an eligible location.<sup>35</sup> To support its findings, ACEC submits detailed county parcel data, photographic evidence,

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<sup>25</sup> *Id.* at 1389, para. 23.

<sup>26</sup> *Id.* at 1389, para. 24; *see also id.* at 1389, para. 24, n.62 (explaining that the new support amount in the state would be calculated by subtracting from the total award, the average per location support awarded (total state support/model locations) multiplied by the total number of deficient locations).

<sup>27</sup> *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.*, Public Notice, 30 FCC Rcd 8283 (2015).

<sup>28</sup> *Id.*

<sup>29</sup> ACEC Petition.

<sup>30</sup> Consolidated Petition.

<sup>31</sup> ACEC Petition at 4.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 4.

<sup>34</sup> *Id.* at 4-5.

<sup>35</sup> *Id.* at 5.

and explanatory notes (including evidence for every census block within one SAC (356220) and for some of the census blocks in the remaining SACs).<sup>36</sup>

10. ACEC explains that, based on an overall assessment of its evidence, it had “reason to conclude some locations identified and counted in [modeled location count] were ... non-residential structures such as barns, livestock buildings, machine storage structures, and grain operations where there would be no need for broadband facilities.”<sup>37</sup> ACEC asserts that as a fixed wireless provider, it has no incentive to “cherry pick” locations by choosing to serve only the most affordable locations within the SACs because once antennas are installed, ACEC benefits from serving every location.<sup>38</sup> ACEC explains that it has deployed its network in each of the SACs in an “effort to provide 100% coverage.”<sup>39</sup> ACEC states that “[t]o the best of its knowledge, ACEC will be able to deploy fiber/fixed wireless facilities capable of reaching the actual number of residential and small business locations within each awarded census block.”<sup>40</sup>

11. *Consolidated’s Petition for Waiver.* Consolidated states that it currently serves all locations that it has been able to identify, 162 locations, or approximately 95% of the 171 locations that it is required to serve.<sup>41</sup> It seeks waiver of its final milestone (August 7, 2020).<sup>42</sup> Consolidated explains that, to ensure that it had identified every eligible location within its SAC, it developed a mapping system to identify all locations passed.<sup>43</sup> Consolidated states that it then overlaid this map with third-party aerial photographs and cross-checked its information against searches in the relevant county website.<sup>44</sup> These searches, Consolidated explains, identified properties by address on specific streets.<sup>45</sup> Consolidated states that it used this information to identify addresses for locations and to “make sure it did not miss any locations.”<sup>46</sup> Consolidated states that the “mapping systems developer also completed a physical drive-by of approximately 180 miles to determine if locations were habitable.”<sup>47</sup> Consolidated states that it has reported every location it has identified (and currently serves) in USAC’s High Cost Broadband Portal (HUBB), pursuant to its annual reporting obligations.<sup>48</sup> Consolidated also submits, among other things, a

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<sup>36</sup> *Id.* at 5; ACEC Supplement.

<sup>37</sup> ACEC Petition at 6.

<sup>38</sup> *Id.* at 6.

<sup>39</sup> *Id.* at 7.

<sup>40</sup> *Id.*

<sup>41</sup> Consolidated Petition at 3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8795-97, paras. 76-85; *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12908 (WCB 2016) (aligning, for “administrative efficiency,” the timing of RBE support recipients annual reports with annual reporting requirements for Phase II recipients of model-based support and rate-of-return carriers and directing RBE support recipients to submit their three- and five-year milestone reporting and certifications to the HUBB).



list of census blocks in which it identified some structures as abandoned, and aerial photographs demonstrating the position of such structures within such census blocks.<sup>49</sup>

12. *Waiver Standard.* The Commission may waive its rules and requirements for “good cause shown.”<sup>50</sup> Good cause, in turn, may be found “where particular facts would make strict compliance inconsistent with the public interest.”<sup>51</sup> In making this determination, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.”<sup>52</sup> Waiver of the Commission’s rules is “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>53</sup> To make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.<sup>54</sup>

### III. DISCUSSION

13. We find that petitioners have demonstrated that special circumstances warrant waiver of their defined deployment obligations and the associated RBE default rules. Accordingly, rather than allowing these petitioners to default on their obligations and recovering all support awarded, we will rebase their obligations and awards (on a per-location basis) to reflect the number of actual locations that they have identified. Doing so serves the public interest by helping to ensure the continuing viability of the petitioners’ networks in serving residential and small business locations while protecting the integrity of the bidding process in producing efficient deployment to consumers.<sup>55</sup>

14. Both ACEC and Consolidated demonstrate that they timely implemented reasonable network deployment plans to serve their entire SACs and to identify every eligible location within their service areas.<sup>56</sup> There is no indication that either petitioner systematically or even unintentionally excluded eligible locations based on cost or difficulty in providing service, such as might be caused by

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<sup>49</sup> See Consolidated Supplement.

<sup>50</sup> 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

<sup>51</sup> *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>52</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>53</sup> *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

<sup>54</sup> See, e.g., *Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011) (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); see also *WAIT Radio*, 418 F.2d at 1155, 1157.

<sup>55</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124 (recognizing that some defaulting carriers may continue to operate partially-built networks and that the Commission will only draw on the letter of credit for the entire amount disbursed if funding recipient fails to repay the support associated with the compliance gap, since, under those circumstances, “the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed.”); see also *id.* at 6018, para. 198 (emphasizing that where an ETC is unable to repay the support associated within a compliance gap, it is “also unlikely to be able to meet its obligations to use the support to offer service meeting the Commission’s requirements,” and accordingly, “recovering 100 percent of the support will allow the Commission to re-award the support through an alternative mechanism to an ETC that will be able to meet its obligations.”).

<sup>56</sup> See *supra* paras. 10-12.

density or terrain.<sup>57</sup> Both petitioners explain that they combined generally accepted methods of geolocation to identify locations and to control for inaccuracies and omissions.<sup>58</sup> Further, both petitioners provide some supporting evidence for their findings. Based on the representations made in the petitions, as well as the supporting evidence, the Bureau may reasonably conclude that both petitioners made good faith efforts to identify every actual location within the SACs and that such efforts have resulted in a reasonably reliable list that is both accurate and complete.

15. These circumstances may have preexisted the petitioners' placement of bids or may have resulted from demographic changes occurring over time. Neither petitioner alleges that they assessed the number of actual locations within their bid areas at the time they placed their bids or offered proof that locations fell into disutility or otherwise became ineligible during the build-out time frame. Ordinarily, a shortage of locations caused by the overestimation of locations by the CAM in eligible areas would be discoverable through ordinary due diligence measures and would be reflected in bid strategies.<sup>59</sup> To demonstrate special circumstances, carriers awarded support through competitive bidding processes would thus need to show that the discrepancy exists despite reasonable precautionary measures and that they notified the Commission of the discrepancy within a reasonable time frame after the discrepancy was (or should have been) discovered.<sup>60</sup> Alternatively, if the discrepancy was caused by unforeseeable circumstances, we would expect any funding recipient (whether received through an offer or competitive bidding) to seek adjustments at the end of its support term or otherwise demonstrate that the loss in locations could not be recovered in the time remaining in the build-out term (with any required extension of interim milestones).

16. RBE support recipients, however, are differently situated from other CAF Phase II program support recipients in terms of the notice they received regarding the limitations of CAM inputs and the Commission's expectations regarding their due diligence obligations.<sup>61</sup> Further, because the Commission defined RBE commitments at the SAC level rather than the state level, the program has more limited plasticity than other programs: due to the smaller geographic footprint, there is less probability that a loss (or shortage) of actual locations in one census block could be offset by a gain of actual locations in another census block (resulting in a net actual location count in eligible areas equal to or above that estimated by the CAM model). Consequently, RBE support recipients could not limit their risk of noncompliance through calculated and informed bidding strategies in the same way as CAF Phase

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<sup>57</sup> Geolocation information for locations reported into the HUBB toward satisfaction of defined deployment obligations is available on the CAF Broadband Map, <https://data.usac.org/publicreports/caf-map/>. Such locations are displayed on a publicly accessible map that allows for optional overlays, including eligible areas.

<sup>58</sup> Universal Service Administrative Company, Geolocation Methods: A Guide to Successfully Collecting Broadband Deployment Data, <https://www.usac.org/res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf> (for carriers reporting in the HUBB, USAC has published guidance on three generally accepted methods of geolocation (1) GPS in the field, (2) desktop geolocation using web-based maps and imagery, and (3) automated address geocoding (frequently reliant on third-party address data)).

<sup>59</sup> See, e.g., *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1393, para. 35 (explaining that Phase II Auction participants would be hard pressed to demonstrate good cause for waiver if they did not plan on serving 100% of their locations at the start of the program (as adjusted, as warranted, through the Commission's adjustment process)); *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 47 (acknowledging that the risk of noncompliance is a factor in the bidding process but emphasizing that recipients of support awarded through a competitive bidding process generally have control over project areas and size and bid amounts).

<sup>60</sup> Generally, the Commission has indicated that this time frame falls at the beginning of the support term. See *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38, n.88; *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-92, paras. 23-28.

<sup>61</sup> See *supra* paras. 4-6.



II auction support recipients. For this same reason, it is also less likely that any loss of locations over time due to unforeseen circumstances, such as demographic changes or natural disasters, will be offset by newly built or restored locations before the end of the build-out period. Accordingly, the failure of these RBE petitioners to differentiate between a shortage of locations arising from inaccurate CAM estimates and a loss of locations due to unforeseen circumstances and to demonstrate the requisite level of due diligence in bidding and assessment of location counts does not preclude us from finding that special circumstances warrant waiver relief.

17. We also find that deviation from the rule in these circumstances is in the public interest. Granting the requested waivers will not undermine the purposes of setting defined deployment obligations but instead ensure that the petitioners are able to maintain robust networks and offer broadband service. Were we to deny the waiver request and hold the petitioners in default of their defined deployment obligations, the Bureau would ultimately order USAC to draw on the letter of credit securing all the support that the petitioner has received and end all support payments, pursuant to the procedures specified in the *Rural Broadband Experiments Order*.<sup>62</sup> Such measures would threaten the ability of the petitioners to maintain service in the relevant SACs and are not necessary to reinforce the seriousness of meeting USF obligations in full.<sup>63</sup> In contrast, granting the waiver request and making a pro-rata reduction in support, consistent with the approach recently adopted by the Commission for auction support recipients, ensures that support that cannot be used to serve locations that do not exist within these SACs can be reallocated to future CAF processes.<sup>64</sup> For these reasons, we find that petitioners have demonstrated that waiver will serve the public interest.

18. In conclusion, we find that based on the totality of the circumstances, grant of the petitions is warranted. In granting these waiver requests, we make pro rata adjustments to reflect the difference between the CAM-determined location count and the actual location count, based on the average support per location, consistent with Commission guidance for adjustments to defined deployment obligations of price cap carriers accepting model-based support and CAF Phase II Auction support recipients (as summarized in Attachment A).<sup>65</sup> We direct USAC to prorate remaining support payments due to these carriers based on such adjustments.

#### IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

20. IT IS FURTHER ORDERED that the Petitions for Waiver filed by Allamakee-Clayton Electric Cooperative and Consolidated Communications Networks Inc. are GRANTED as described herein and we direct the Universal Service Administrative Company to take further action in accordance with the terms of this Order.

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<sup>62</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8799-800, paras. 92-93.

<sup>63</sup> *Cf. Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124.

<sup>64</sup> *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24, n.62.

<sup>65</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38, n.88; *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24, n.62.

21. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

## Attachment A

<b>Summary of Location Information Provided by Allamakee-Clayton Electric Cooperative</b>				
Study Area Code	CAM-Determined Locations	Actual Locations	Served Locations	Percentage of Actual Locations Reported as Served
356220	38	28	27	96%
356221	63	48	48	100%
356222	41	31	28	90%
356223	523	403	384	95%

**Allamakee-Clayton Electric Cooperative**

<b>Summary of Support Adjustments for Allamakee-Clayton Electric Cooperative</b>					
Study Area Code	Difference between CAM-determined Locations and Petitioner-identified Locations	Term Support Awarded	Per Location Support Awarded	Adjustment	Revised Term Support
356220	-10	\$71,782.00	\$1,889.00	\$(18,890.00)	\$52,892.00
356221	-15	\$136,835.00	\$2,171.98	\$(32,579.76)	\$104,255.24
356222	-10	\$76,269.00	\$1,860.22	\$(18,602.20)	\$57,666.80
356223	-120	\$1,168,707.00	\$2,234.62	\$(268,154.57)	\$900,552.43

**Consolidated Communications Networks, Inc.**

<b>Summary of Location Information Provided by Consolidated Communications Networks, Inc.</b>				
Study Area Code	CAM-Determined Locations	Identified Actual Locations	Served Locations	Percentage of Actual Locations Reported as Served
386325	171	162	162	100%

<b>Summary of Support Adjustment for Consolidated Communications Networks, Inc.</b>					
Study Area Code	Difference between CAM-determined Locations and Petitioner-identified Locations	Term Support Awarded	Per Location Support Awarded	Adjustment	Revised Term Support
38632	-9	\$3,096,810.00	\$18,110.00	\$(162,990.00)	\$2,933,820.00